

“(C) A report on the results of the analysis shall be submitted to the appropriate committees of the House of Representatives and to the Committee on Governmental Affairs and other appropriate committees of the Senate not later than 18 months after August 23, 1988. Such report shall include proposed policy guidance or any recommended legislative changes on the factors to be used in making determinations of country of origin.”

TERMINATION DATE

Section to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

DELEGATION OF FUNCTIONS

Functions of President under this section delegated to Secretary of Defense, see section 4-101(1) of Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779, set out as a note under section 2901 of Title 19, Customs Duties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b-2, 10c, 42, 428 of this title; title 10 sections 2324, 2533; title 15 sections 2507, 5528; title 19 sections 2512, 2513, 2515; title 20 section 6067; title 24 section 225h; title 25 section 1638b.

§ 10b-2. Limitation on authority to waive Buy American Act requirement

(a) Determination by Secretary of Defense

(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding, between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

(b) Report to Congress

The Secretary of Defense shall submit to Congress a report on the amount of Department of Defense purchases from foreign entities in fiscal year 1996. Such report shall separately indicate the dollar value of items for which the Buy American Act was waived pursuant to any agreement described in subsection (a)(2) of this section, the Trade Agreement Act of 1979 (19 U.S.C. 2501 et seq.), or any international agreement to which the United States is a party.

(c) “Buy American Act” defined

For purposes of this section, the term “Buy American Act” means title III of the Act entitled “An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes”, approved March 3, 1933 (41 U.S.C. 10a et seq.).

(Pub. L. 104-61, title VIII, §8051, Dec. 1, 1995, 109 Stat. 662.)

REFERENCES IN TEXT

The Buy American Act, referred to in text, is title III of act Mar. 3, 1933, ch. 212, 47 Stat. 1520, as amended, which enacted sections 10a, 10b, 10b-1, and 10c of this title, and enacted provisions set out as notes under section 10c of this title. For complete classification of this Act to the Code, see Short Title note set out under section 10a of this title and Tables.

The Trade Agreement Act of 1979, referred to in subsec. (b), probably means the Trade Agreements Act of 1979, Pub. L. 96-39, July 26, 1979, 93 Stat. 144. For complete classification of this Act to the Code, see References in Text note set out under section 2501 of Title 19, Customs Duties, and Tables.

PRIOR PROVISIONS

Provisions similar to those in this section were contained in the following prior acts:

Pub. L. 103-335, title VIII, §8058, Sept. 30, 1994, 108 Stat. 2631.

Pub. L. 103-139, title VIII, §8069, Nov. 11, 1993, 107 Stat. 1455.

Pub. L. 102-396, title IX, §9096, Oct. 6, 1992, 106 Stat. 1924, as amended by Pub. L. 103-355, title VII, §7206(b), Oct. 13, 1994, 108 Stat. 3382.

Pub. L. 102-190, div. A, title VIII, §833, Dec. 5, 1991, 105 Stat. 1447.

Pub. L. 102-172, title VIII, §8123, Nov. 26, 1991, 105 Stat. 1205.

Pub. L. 101-189, div. A, title VIII, §823, Nov. 29, 1989, 103 Stat. 1504.

BUY AMERICAN ACT WAIVER RESCISSIONS

Pub. L. 103-160, div. A, title VIII, §849(c), (d), Nov. 30, 1993, 107 Stat. 1725, provided that:

“(c) BUY AMERICAN ACT WAIVER RESCISSIONS.—(1) If the Secretary of Defense, after consultation with the United States Trade Representative, determines that a foreign country which is party to an agreement described in paragraph (2) has violated the terms of the agreement by discriminating against certain types of products produced in the United States that are covered by the agreement, the Secretary of Defense shall rescind the Secretary's blanket waiver of the Buy American Act with respect to such types of products produced in that foreign country.

“(2) An agreement referred to in paragraph (1) is any reciprocal defense procurement memorandum of understanding between the United States and a foreign country pursuant to which the Secretary of Defense has prospectively waived the Buy American Act for certain products in that country.

“(d) DEFINITION.—For purposes of this section, the term ‘Buy American Act’ means title III of the Act entitled ‘An Act making appropriations for the Treasury and Post Office Departments for the fiscal year ending June 30, 1934, and for other purposes’, approved March 3, 1933 (41 U.S.C. 10a et seq.).”

§ 10c. Definition of terms used in sections 10a, 10b, 10b-1, and 10c

When used in sections 10a, 10b, 10b-1, and 10c of this title—

(a) The term “United States”, when used in a geographical sense, includes the United States and any place subject to the jurisdiction thereof;

(b) The terms “public use”, “public building”, and “public work” shall mean use by, public building of, and public work of, the United States, the District of Columbia, Puerto Rico, American Samoa, the Canal Zone, and the Virgin Islands;

(c) The term “Federal agency” has the meaning given such term by section 472 of title 40, which includes the Departments of the Army, Navy, and Air Force.

(Mar. 3, 1933, ch. 212, title III, § 1, 47 Stat. 1520; Proc. No. 2695, eff. July 4, 1946, 11 F.R. 7517, 60 Stat. 1352; June 25, 1959, Pub. L. 86-70, § 43, 73 Stat. 151; July 12, 1960, Pub. L. 86-624, § 28, 74 Stat. 419; Aug. 23, 1988, Pub. L. 100-418, title VII, § 7005(a), 102 Stat. 1552.)

AMENDMENT OF SECTION

For termination of amendment by section 7004 of Pub. L. 100-418, see Termination Date of 1988 Amendment note below.

REFERENCES IN TEXT

For definition of Canal Zone, referred to in subsec. (b), see section 3602(b) of Title 22, Foreign Relations and Intercourse.

CODIFICATION

Words “the Philippine Islands” in subsec. (b) of this section were deleted as obsolete in view of recognition of independence of the Philippines by Proc. No. 2695, which was issued pursuant to section 1394 of Title 22, Foreign Relations and Intercourse, and is set out as a note under section 1394.

AMENDMENTS

1988—Subsec. (c). Pub. L. 100-418, §§ 7004, 7005(a), temporarily added subsec. (c). See Termination Date of 1988 Amendment note below.

1960—Subsec. (b). Pub. L. 86-624 struck out Hawaii.

1959—Subsec. (b). Pub. L. 86-70 struck out Alaska.

TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

EFFECTIVE DATE

Section 5, formerly section 4 of act Mar. 3, 1933, as renumbered by Pub. L. 100-418, title VII, § 7002(1), Aug. 23, 1988, 102 Stat. 1545, provided: “This title [enacting sections 10a to 10c of this title] shall take effect on the date of its enactment [Mar. 3, 1933], but shall not apply to any contract entered into prior to such effective date.” [Another section 5 of act Mar. 3, 1933, is set out as a Short Title note under section 10a of this title.]

SEPARABILITY

Section 6, formerly section 5 of act Mar. 3, 1933, as renumbered by Pub. L. 100-418, title VII, § 7002(1), Aug. 23, 1988, 102 Stat. 1545, provided: “If any provision of this Act [enacting this section and sections 10a, 10b, and 10b-1 of this title], or the application thereof to any person or circumstances, is held invalid, the remainder of the Act, and the application thereof to other persons or circumstances, shall not be affected thereby.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 10b-2, 42, 428 of this title; title 10 section 2533; title 15 sections 2507, 5528; title 19 sections 2512, 2513; title 20 section 6067; title 24 section 225h; title 25 section 1638b.

§ 10d. Clarification of Congressional intent regarding sections 10a and 10b(a)

In order to clarify the original intent of Congress, hereafter, section 10a of this title and that part of section 10b(a) of this title preceding the words “*Provided, however,*” shall be regarded as requiring the purchase, for public use within the United States, of articles, materials, or supplies manufactured in the United States in sufficient

and reasonably available commercial quantities and of a satisfactory quality, unless the head of the Federal agency concerned shall determine their purchase to be inconsistent with the public interest or their cost to be unreasonable.

(Oct. 29, 1949, ch. 787, title VI, § 633, 63 Stat. 1024; Aug. 23, 1988, Pub. L. 100-418, title VII, § 7005(d), 102 Stat. 1553.)

AMENDMENT OF SECTION

For termination of amendment by section 7004 of Pub. L. 100-418, see Termination Date of 1988 Amendment note below.

AMENDMENTS

1988—Pub. L. 100-418, §§ 7004, 7005(d), temporarily substituted “Federal agency” for “department or independent establishment”. See Termination Date of 1988 Amendment note below.

TERMINATION DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-418 to cease to be effective on Apr. 30, 1996, unless Congress, after reviewing report required by section 2515(k) of Title 19, Customs Duties, extends such date, see section 7004 of Pub. L. 100-418, set out as an Effective and Termination Dates of 1988 Amendment note under section 10a of this title.

EX. ORD. NO. 10582. UNIFORM PROCEDURES FOR DETERMINATIONS

Ex. Ord. No. 10582, Dec. 17, 1954, 19 F.R. 8723, as amended by Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239; Ex. Ord. No. 12608, Sept. 9, 1987, 52 F.R. 34617, provided:

SECTION 1. As used in this order, (a) the term “materials” includes articles and supplies, (b) the term “executive agency” includes executive department, independent establishment, and other instrumentality of the executive branch of the Government, and (c) the term “bid or offered price of materials of foreign origin” means the bid or offered price of such materials delivered at the place specified in the invitation to bid including applicable duty and all costs incurred after arrival in the United States.

SEC. 2. (a) For the purposes of this order materials shall be considered to be of foreign origin if the cost of the foreign products used in such materials constitutes fifty per centum or more of the cost of all the products used in such materials.

(b) For the purposes of the said act of March 3, 1933 [41 U.S.C. 10a to 10c], and the other laws referred to in the first paragraph of the preamble of this order, the bid or offered price of materials of domestic origin shall be deemed to be unreasonable, or the purchase of such materials shall be deemed to be inconsistent with the public interest, if the bid or offered price thereof exceeds the sum of the bid or offered price of like materials of foreign origin and a differential computed as provided in subsection (c) of this section.

(c) The executive agency concerned shall in each instance determine the amount of the differential referred to in subsection (b) of this section on the basis of one of the following-described formulas, subject to the terms thereof:

(1) The sum determined by computing six per centum of the bid or offered price of materials of foreign origin.

(2) The sum determined by computing ten per centum of the bid or offered price of materials of foreign origin exclusive of applicable duty and all costs incurred after arrival in the United States: provided that when the bid or offered price of materials of foreign origin amounts to less than \$25,000, the sum shall be determined by computing ten per centum of such price exclusive only of applicable duty.

SEC. 3. Nothing in this order shall affect the authority or responsibility of an executive agency:

(a) To reject any bid or offer for reasons of the national interest not described or referred to in this order; or